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SIPDIS

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SUBJECT: DOMINICAN BANKING SERIES # 8 - DOMINICAN FAILED  
BANK CASES - MOVEMENT IN THE COURTS

REF: 04 SANTO DOMINGO 5426

1. (U) This is number 8 in a series of cables on the Dominican bank failures of 2003. This cable contains an action request, please see paragraphs 7 and 12.

Baninter, Banco Mercantil and Bancredito - legal case status on the banks that broke the Dominican Republic

2. For the first time in over a year, there is substantive action in the Dominican courts on the Baninter case. The three member appellate panel charged with reviewing the decisions of the judge of instruction (investigating judge), has begun to hear testimony in the case. This action takes place after a long delayed decision by the Supreme Court denying a motion to recuse one of the appellate panel members. In response to the apparent forward motion of the court, the Ramon Baez defense team is ramping up once again in its public relations efforts to clear the name of its client. Meanwhile, the U.S. investigation appears to be stalled by the resignation of the Assistant U.S. Attorney handling the case and an internal DHS/ICE conflict on which office has the lead investigative role in the case.

3. Justice continues to move slowly in the Banco Mercantil case, but at least it is moving. Two defendants have been bound over for trial, and the first round of the appeals process has begun. The Bancredito case has ground to a halt. It remains in the investigatory phase with no indication of when the judge of instruction may issue his decision.

Action on Baninter - witnesses being questioned

4. On July 15, the three member appellate panel in the Baninter case interrogated its first witness in over a year. The panel will determine two primary issues on appeal: 1) the request of Ramon Baez Figueroa and Marcos Coco Baez attorneys (Baez defense team) to reverse the decision of the judge of instruction holding that sufficient evidence of crimes exist to proceed to trial against them (thereby dropping all remaining charges against them), and 2) the request of the Central Bank to reverse the decision of the judge of instruction holding that insufficient evidence of crimes exists to proceed against four other defendants and against Baez Figueroa and Coco Baez on certain charges (thereby reinstating charges against all six of the original defendants in the case).

5. The case had been stalled in the panel while the Supreme Court decided a motion to remove one of the appellate judges from the case. However, rumors circulated that the panel slow-down was due to political pressure that started when the Fernandez administration took over in August 2004. President Fernandez mostly has kept his distance from the bank fraud issue stating consistently that the cases are in the courts and that the independent judiciary will issue its decisions in due course. The comments he has made lean toward placing the blame for the bank failures on the Mejia administration oversight committee (Central Bank and Superintendent of Bank officials) rather than the bank executives. Additionally, President Fernandez has claimed "Vinchito" Castillo as one of his inspirations - Vinchito is lead attorney for the Dominican based portion of the Baez defense team. Despite the rumors of the politically motivated slow-down, increased pressure by civil society, especially the group Participacion Ciudadana (Citizen Participation), and a public interest in the cases expressed by the local representatives of the International Monetary Fund may have contributed to the recent revival of the proceedings. The Supreme Court denied the motion to recuse the appellate judge and left the appellate panel intact.

6. The panel began interrogating witnesses on July 15; that action in and of itself is notable. The panel had the option of making its decision based solely on the record created by the judge of instruction. However, by calling witnesses, the panel has indicated that it intends to consider new information and evidence (as permitted by law) prior to rendering its decision. If the panel conducts its investigation of the case thoroughly and without outside influence, the Central Bank and the Dominican Attorney

General's office assure us that they will find sufficient evidence to move the case to trial against all six defendants.

17. Related to the recent movement on the Dominican side of the case, the Dominican Attorney General has requested a meeting with the U.S. Attorney for the Southern District of Florida during a planned trip to Miami (August 3, 4, 5) to discuss the progress of the U.S. based investigation. Embassy Santo Domingo has contacted DOJ/OIA and the DHS/ICE Caribbean to pass on the request. The Embassy asks for all possible assistance in arranging this meeting. (See also paragraph 12).

Baez defense team takes the case to the press

18. With each new step in the case, the Baez defense team takes to the press. The latest tactic is an attempt to discredit current and past government officials by blaming their lack of oversight for the bank failures. Current Central Bank President Hector Valdez Albizu was the Superintendent of Banks during the first Fernandez administration. He has come under fire, directed by the Baez defense team, for signing off on auditors' statements assuring the liquidity of Baninter in the late 1990s. The Baez defense team also continues to criticize the Central Bank and Superintendent of Banks' leadership under the Mejia administration, noting that the bank fraud did not cause the economic collapse of 2003; they assert that the "over-insurance" paid by the government when it decided to make good on bad Baninter accounts caused the collapse. Valdez Albizu discussed this with the Ambassador to ensure the Ambassador was aware of his position that a fraud had occurred and that legal action should continue. He also showed concern that all members of the Fernandez administration were not necessarily on the same page on this issue. Valdez Albizu told the Ambassador that he planned to talk to President Fernandez about the conflicting public messages of the various members of his administration.

19. Another public Baez defense team tactic to take the spotlight away from their client involves the IMF. Within the past three weeks the Baez defense team contacted the IMF to ask if any of the conditions of the IMF accords with the Dominican Republic required prosecution of named individuals.

The IMF answered succinctly via letter that the conditions did not require prosecution of any named individual. The Baez defense team bought ad space in all the Dominican dailies, reprinted the IMF's letter with the added inference that their client must not be at fault in the Baninter failure or the IMF would have implicated him. The spin on what the IMF believed to be an innocuous letter was so egregious that it felt compelled to write a more detailed letter to the press explaining that the IMF did not condition its accords on the prosecution of named individuals out of respect for an independent judiciary, but that lack of conditionality did not mean that the IMF would not continue to carefully monitor ongoing court proceedings in which proof of fraudulent and illegal activities in the banking sector was evident.

110. The Baez defense team is also on the move in the United States with the Miami branch of the international law firm of Greenberg Taurig representing Ramon Baez. Greenberg Taurig Attorney Jesus Cuza recently contacted Embassy officials to request an interview, "because it appears that certain statements and/or representations that may have been made by you conflict with our understanding of the USG's position on the (Baez legal matters in the Dominican Republic), we would like to meet with you as soon as possible to discuss the matter in detail." The Embassy declined the request, because we do not comment on ongoing cases, Cuza's tone implied that he was fishing for information concerning his client that Embassy officials might have.

Baninter in the United States - who's in charge?

111. With the creation of the Department of Homeland Security and ICE, legacy INS and Customs Attache offices were merged into ICE Attache offices. The Baninter case investigation in the United States was initiated by the ICE Attache Caribbean office and was conducted in conjunction with the ICE office of the Special Agent in Charge (SAC), Miami, Florida. ICE Attache Caribbean, as a legacy Customs Attache office, was responsible for all legacy customs investigations being conducted in the Dominican Republic. The legacy INS Attache office at Embassy Santo Domingo, now an ICE Attache office, was subsequently given responsibility for all ICE investigative activity, including both legacy INS and Customs disciplines, in the Dominican Republic. The Baninter case investigation into U.S. based crimes is waiting to be transferred from the Miami based ICE Attache Caribbean office to the ICE Attache office at Embassy Santo Domingo. Until the transfer takes place, the investigation is not moving forward. In addition, the ICE agent investigating the criminal side of the case in Miami has been hampered by health problems and has not been able to fully dedicate himself to the case.

¶12. At the U.S. Attorney's Office for the Southern District of Florida, the Assistant U.S. Attorney previously assigned to lead the Baninter investigation and case is resigning. The case has been passed to a new AUSA who is not yet familiar with the complex fact pattern underlying the alleged crimes. Embassy Santo Domingo reiterates its previous requests for Department of Homeland Security and Department of Justice assistance in investigating and prosecuting U.S.-based crimes related to the Baninter failure, ref A.

Meanwhile in the Banco Mercantil and Bancredito cases. . .

¶13. In the case of Banco Mercantil, the third of the three failed banks of 2003, the procedural posture has moved forward slightly and now mirrors that of the Baninter case. On June 14, judge of instruction Eduardo Sanchez Ortiz, the judge of instruction also assigned to the Baninter case, bound over for trial two defendants, Andres Aybar Baez and Evelyn Altagracia Perez Montandon. He found insufficient evidence against 12 other defendants and dropped the charges against them. Aybar Baez was the former president of Banco Mercantil and Perez Montandon was the former vice president of finances for the bank.

¶14. As with Baninter, both sides have filed appeals. Aybar Baez and Perez Montandon have asked an appellate panel to overturn the judge of instruction's decision to send them to trial. The Central Bank and the Attorney General's office have asked that charges be reinstated against the 12 additional original defendants in the case and that individual charges dropped against Aybar Baez and Perez Montandon be reinstated.

¶15. The Bancredito case has seen no movement at all since our last report on the case in September 2004.

Our thoughts. . .

¶16. We are encouraged that the appeals panel in the Baninter case appears to be investigating the underlying criminal charges against the actors, but we are not optimistic that the principals in the case will be prosecuted. It has been two years since the Baninter case was opened in the Dominican courts, and it remains in a very preliminary phase. No trial date has been set, the charges are still being contested, and all defendants are free on bail. The judicial system is weak; some judges susceptible to bribes and payoffs and others are untrained to handle complex fraud cases such as these. The Attorney General's office and the Central Bank lawyers have told us that they intend to press forward, but that true justice will come only if the criminal charges are brought against the main actors in the United States.

¶17. (U) Drafted by Angela Kerwin. This report and others in our bank fraud series can be found on our SIPRNET site at <http://www.state.sgov.gov/p/wha/santodomingo/> .  
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